

§ 2201.6

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received full payment or satisfactory assurance of full payment as provided under § 2201.7(f).

§ 2201.6 Responses to requests.

(a) *Responses within 20 working days.* The FOIA Disclosure Officer will either grant or deny a request for records within 20 working days after receiving the request. The 20-day period shall not be tolled by the agency except in the following cases. In these cases, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(1) The agency may toll the 20-day period once while awaiting information that it has reasonably requested from the requester under this section. The agency may make more than one request to the requester for information not related to issues regarding fee assessment, but can only toll the 20-day period once; or

(2) The agency may toll the 20-day period as many times as are necessary to clarify any issues regarding fee assessment.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The FOIA Disclosure Officer shall notify the requester in writing of the extension, the reasons for the extension and the date on which a determination is expected. "Unusual circumstances" exists, but only to the extent reasonably necessary to the proper processing of the particular request, when there is a need to:

(1) Search for and collect the requested records from one of OSHRC's regional offices or off-site storage facilities;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request.

(c) *Additional extension.* The FOIA Disclosure Officer shall notify the requester in writing when it appears that

a request cannot be completed within the allowable time (20 working days plus a 10-working-day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) *Two-track processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two-track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving "unusual circumstances" that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) A requester should assume, unless otherwise notified by the Commission, that its request is in the first track of processing. The Commission will notify a requester when its request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified in writing. In the case of a request expected to take more than 30 working days for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to a requester as documents are obtained by the FOIA Disclosure Officer from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term *compelling need* means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the Commission as a matter of agency discretion.

(3) The FOIA Disclosure Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether processing will be expedited.

(f) *Content of denial.* When the FOIA Disclosure Officer denies a request for records, either in whole or in part, a request for expedited processing, and/or a request for fee waivers (see § 2201.8), the written notice of the denial shall state the reason for denial, give a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), set forth the name and title or position of the person responsible for the denial of the request, and notify the requester of the right to appeal the determination as specified in § 2201.9. A refusal by the FOIA Disclosure Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.7(f) may be treated as a denial of the request and appealed under § 2201.9.

(g) *Deletions.* The FOIA Disclosure Officer shall provide to the requester in writing a justification for deletions within records. The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible,

the place in the record where the deletion is made, and the exemption under which the deletion is made, shall be marked.

(h) *Tracking numbers.* The FOIA Disclosure Officer shall assign an individualized tracking number to each request received for processing and provide to each person making a request the tracking number assigned to the request. For any response that will take ten or more days to process, OSHRC will send the requester a postcard indicating the request's receipt date and its assigned tracking number.

(i) *Determining responsive records.* In determining which records are responsive to a request, OSHRC ordinarily will include only records in its possession as of the date it begins its search for them. If any other date is used, OSHRC shall inform the requester of that date.

[71 FR 56350, Sept. 27, 2006, as amended at 75 FR 41372, July 16, 2010]

§ 2201.7 Fees for copying, searching, and review.

(a) *Fees required unless waived.* The FOIA Disclosure Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than the threshold amount as provided in OSHRC's fee schedule, in which case no fees shall be charged. See Appendix A. The FOIA Disclosure Officer shall, however, waive the fees in the circumstances stated in § 2201.8.

(b) *Calculation of fees.* Fees for copying, searching and reviewing will be based on the direct costs of these services, including the average hourly salary (base plus DC locality payment), plus 16 percent for benefits, of the following three categories of employees involved in responding to FOIA requests: clerical—based on an average of all employees at GS-9 and below; professional—based on an average of all employees at GS-10 through GS-14; and managerial—based on an average of all employees at GS-15 and above. OSHRC will calculate a schedule of fees based on these direct costs. The schedule of fees under this section appears in Appendix A to this part 2201. A copy of the schedule of fees may also be obtained at no charge from the FOIA Disclosure Officer. See § 2201.3(d).